IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.2399 OF 2004

S.N. Bhalerao. ...Petitioner.
Vs.
Chairman, National Insurance Co.Ltd. & Ors. ...Respondents.
....
Mr.C. U. Singh Mr.Rahul G. Walia for the Petitioner.
Mr. K. K. Singhvi, Sr.Counsel with Mr. V.Y. Sanglikar for the Respondents.
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CORAM : DALVEER BHANDARI, C.J. &
DR.D.Y.CHANDRACHUD, J.

October 7, 2004.

P.C.:

The Petitioner is employed as a Manager in the Mumbai Divisional Office of the National Insurance Company Ltd. On 8th January 2002, a memorandum of charges was issued to the Petitioner by the General Manager of the First Respondent inter alia pertaining to the settlement of certain claims by the Petitioner during the years 1995-98 while functioning as a Senior Divisional Manager in the Divisional Office of the Company. The Petitioner submitted his reply to the chargesheet. An enquiry was thereupon convened and Shri S.M. Lal, Commissioner for Departmental Inquiries, Central Vigilance Commission, New Delhi, was appointed as an Enquiry Officer. Proceedings took place in the enquiry and

on 6th August 2003, the Enquiry Officer submitted a report holding that the charges were not proved. The enquiry report inter alia held as follows:

> "Important witnesses such as Proprietors of the firms, Insured or owners of the shops either did not turn up before the I.O. or were not cited as witnesses by the prosecution in support of the charges levelled against the charged officer. In most of the cases, the witnesses either from the prosecution or defence side have not been cross-examined by the prosecution, which means the prosecution side is in full agreement with the facts as stated by them during their depositions before the I.O."

2. On 25th May 2004, the Disciplinary Authority issued a notice to the Petitioner recording that the Enquiry Officer had observed that the Presenting Officer had dropped eight witnesses who had been summoned. The notice recited that it was incorrect for the Enquiry Officer to observe that the Presenting Officer had dropped witnesses since amongst the witnesses (i) Shri C. P. Kumar, Deputy Manager NICL had faxed a letter dated 29th

January 2003 informing the Enquiry Officer about the belated receipt of the summons to attend the proceedings; (ii) Mohd. Furquan Usman, who had been cited as a witness, had by his letter dated 31st December 2002 informed the Presenting Officer and by his letter dated 17th January 2003 had informed the Enquiry Officer that he would be available for the enquiry after 10th February 2003 since he was required to be out of Mumbai due to his son's marriage. The witness, it was recorded, had enclosed a Xerox copy of a Railway ticket for his journey from Mumbai to Delhi. The disciplinary authority then noted that the Enquiry Officer has erred in coming to the conclusion that since D. W. 2 had submitted a re-inspection report, hence bills and cash memos were available in the file. The Disciplinary Authority observed that bill and cash memos were not available, and the claim was settled without getting the matter investigated despite several adverse features in the claim. Consequently, by the aforesaid notice, the Petitioner was called upon to explain as to why a de novo enquiry should not be ordered under Rule 26 of the General Insurance (Conduct, Discipline & Appeal) Rules, 1975.

3. The Petitioner responded by his letter dated 12th June

2004 to the aforesaid notice. By the impugned order dated 6th July 2004, the Disciplinary Authority has ordered a de novo enquiry and has appointed Shri D.K. Burman, AGM, National Insurance Company Limited as Enquiry Officer under Rule 26 of the Conduct, Discipline and Appeal Rules, 1975. The reasons which have weighed with the Disciplinary Authority are thus :

> "And whereas, Shri S. M. Lal, CDI submitted Inquiry Report dated 6-8-2003 wherein he observed that Presenting Officer dropped 8 witnesses out of 11 witnesses summoned. It is incorrect to say that Presenting Officer dropped the witnesses. On the other hand Shri C. P. Kumar, Deputy Manager, NICL directly faxed his letter dated 29-01-2003 informing Shri Lal about his belated receipt of the summons. The Inquiry Officer erred in coming to conclusion in paragraph 6.6 page 71 of the Inquiry Report that in order to prove the charge no.1 Management cited Shri C. P. Kumar as witness who did not appear before IO. It was also wrongly held that no witness was produced by prosecution who could establish whether the above firm

was existing at the time when the claim was lodged. It is on record that Mohd. Furquan Usman vide his letter dated 31-12-2002 informed Presenting Officer and 17.01.2003 to Shri Satish Mohan Lal that he would be available after 10th February 2003 since he was going out of Mumbai for his son's marriage. Even he enclosed Xerox copy of the Railway Ticket showing his journey from Mumbai to New Delhi on 20-01-2003".

4. The order of the Disciplinary Authority is sought to be questioned by the Petitioner in these proceedings under Article 226 of the Constitution.

5. At the outset, it would be necessary to note that Counsel for the Petitioner does not dispute the power of the Disciplinary Authority to order a de novo enquiry, but questioned the correctness of the reasons which have weighed with the Disciplinary Authority and his bonafides in passing the order. The power of the Disciplinary Authority has, in our view, correctly not been questioned in view of the provisions of Rule 26 of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975, which

provides as follows :

> “26. Action on the inquiry report
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> The competent authority, if it is not itself the inquiring authority, may, for reasons to be recorded by it in writing remit the case to the inquiring authority for fresh or further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of rule 25 as far as may be.
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> (2) The competent authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.
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> (3) If the competent authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in rule 23 should be imposed on the employee it shall,

notwithstanding anything contained in rule 27 make an order imposing such penalty.

(4) If the competent authority having regard to its findings on all or any of the articles of charge is of the opinion that no penalty is called for, it may pass an order exonerating the employee concerned." (emphasis supplied).

6. Counsel appearing for the Petitioner has submitted that the Enquiry Officer recorded in the minutes of the proceedings of 30th January 2003 that the Presenting Officer stated that since despite 'all best efforts', the prosecution witnesses had not appeared for the enquiry, hence they may be dropped and that the application was allowed. The Enquiry Officer stated in the course of his report that important witnesses such as the Proprietors of the firms, Insured or owners of the shops either did not turn up before the Inquiry Officer or were not cited as witnesses by the Department.

7. On the other hand, on behalf of the Respondents it has

been submitted in the affidavit in reply that Shri S. M. Lal was appointed as an Enquiry Officer on 10th July 2002 and that the actual enquiry had commenced on 20th January 2003. The First Respondent proposed to examine 11 witnesses. The Enquiry Officer came to Mumbai from New Delhi and recorded evidence on three days between 29th and 31st January 2003 and closed the enquiry without affording an opportunity of examining nine witnesses who could not remain present on the aforesaid three days. In the affidavit in reply, it has been stated that one of the witnesses, Mohd Furquan had informed the Enquiry Officer by a letter dated 17th January 2003 that he was going to be out of Mumbai until 10th February 2003; similarly, another witness Shri C.P. Kumar, Deputy Manager, had informed by a Fax communication dated 29th January 2003 that he had received the summons only on 28th January 2003 and hence was unable to attend the enquiry at such a short notice. Apart from these two witnesses, the Respondents have also stated in the affidavit in reply that another witness, Shri M. Parthasarathy, had by a letter dated 24th January 2003 requested that the date for recording his evidence be fixed in the last week of February 2003. In the affidavit in reply filed in these proceedings the Respondents have

also annexed an affidavit of the Presenting Officer who deposes that on 29th January 2003 he sought an adjournment as nine witnesses could not remain present. The Enquiry Officer, however, directed the Presenting Officer to ensure their presence on the next day - 30th January 2003, recording that no further adjournment would be granted. A copy of the Minutes dated 29th January 2003 has been annexed to the affidavit. The Presenting Officer has stated that by his letter dated 30th January 2003, he informed the Enquiry Officer about the position of some of the witnesses clarifying why they were unable to attend the enquiry on the specified date. The Enquiry Officer, however, refused to grant time and proceeded to record that the Presenting Officer had dropped the witnesses. The Presenting Officer has, in his affidavit, stated that he had never meant that he did not wish to examine those nine witnesses for the purpose of the enquiry. The communications addressed by three witnesses, Mohd Furquan of 31st December 2002, M. Parthasarathy, Deputy Manager, on 24th January 2003 and C.P. Kumar, Deputy Manager and Vigilance Officer dated 29th January 2004, have been annexed to the affidavit in reply.

8. We are of the view that in the aforesaid background, the order of the Disciplinary Authority in exercising the power under Rule 26 cannot be faulted. The Disciplinary Authority has, in our view, acted within the scope of his powers in coming to the conclusion that several witnesses who were cited by the Department for being examined in support of the charges had furnished intimations well in advance that they were unable to attend the enquiry for valid and tenable reasons. This was obviously not a case where the witnesses were evading attendance at the enquiry. For the purposes of these proceedings, it is not, in our view, necessary to enter into the controversy as to whether the Enquiry Officer has correctly recorded what transpired at the meeting on 30th January 2003. The Disciplinary Authority was fully within his jurisdiction in holding that it was necessary that an opportunity should be given to the Department to lead evidence of the aforesaid witnesses who were unable to remain present at the enquiry for sufficient reasons.

9. Counsel appearing for the Petitioner relied upon a judgment of the Supreme Court in **Union of India v. K. D. Pandey**, 2003 SCC (L&S) 791. That was a case where

proceedings were initiated against the First Respondent in respect of six charges. The inquiring authority held that none of those charges stood proved. Thereafter, the Railway Board in exercise of powers under Rule 25 of the Railway Servants (Discipline and Appeal) Rules, 1968 examined the matter and found that four of the six charges could be substantially proved beyond doubt with the available documentary evidence and thereafter remitted the matter for further inquiry. On remit the Inquiry Officer found the First Respondent guilty of four charges, based on which the First Respondent was dismissed from service. That was a case where, as the Supreme Court noted, “The Tribunal as well as the High Court are of the view that on the same material a fresh opinion has been furnished and it was not a case of further inquiry.” Moreover, the Supreme Court noted, “it was not noticed by the disciplinary authority that the inquiry held earlier was bad or that the management or the establishment did not have the proper opportunity to lead evidence or the findings were perverse.” (emphasis supplied) In these circumstances, it was held that there was no justification on the part of the Disciplinary Authority to commence a fresh enquiry. These findings by the High Court were confirmed by the Supreme Court. In the present case, in

contradistinction, the disciplinary authority has specifically come to the conclusion that an adequate opportunity was not granted to the Department to prove the charges of misconduct since the enquiry, it would appear, was hurriedly closed despite communications having been received from several witnesses of their inability to attend the enquiry for valid reasons. This is, therefore, a case which clearly falls within the parameters of a situation where an adequate opportunity has not been granted by the Enquiry Officer to the Department to prove the charges. The Disciplinary Authority was, therefore, within the exercise of his power to order a de novo enquiry under Rule 26. We find nothing illegal in the decision. No material is produced to establish that the decision is lacking in bonafides.

10. Before concluding, we, however, wish to record that we had called upon Counsel appearing on behalf of the Respondents to seek instructions on whether the First Respondent would be willing to seek an appointment of the Enquiry Officer through the Central Vigilance Commission since this was the procedure which was followed initially. As we have already noted earlier, the Disciplinary Authority while ordering a de novo enquiry, had

appointed Shri D.K. Burman, AGM as the Enquiry Officer. We were of the view that in order to obviate any charge of unfairness, it would be appropriate if the enquiry were to be conducted by an officer drawn from the Central Vigilance Commission as in the first instance. Counsel appearing for the First Respondent has fairly stated before the Court, upon instructions, that the First Respondent would forward a requisition to the Central Vigilance Commission to depute an Enquiry Officer. We record and accept the aforesaid assurance. Subject to the aforesaid modification, we do not find any reason to interfere with the impugned order dated 6th July 2004. The petition shall accordingly stand disposed of. There shall be no order as to costs.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD, J.